

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 00-C-0127 - Proceeding on Motion of the Commission to
Examine Issues Concerning Provision of Digital
Subscriber Line Services.

RULING ESTABLISHING PROCESS AND
CONVENING PROCEDURAL CONFERENCE

(Issued November 18, 2002)

JOEL A. LINSIDER, Administrative Law Judge:

In my ruling in this proceeding issued October 30, 2000, I invited the parties to submit statements of the substantive positions they anticipate taking in the litigation here contemplated and of the procedural mechanisms they favor for the conduct of that litigation. Statements were submitted by Verizon, AT&T, Covad, and WorldCom.

The statements disclose significant differences between Verizon on the one hand and the CLECs on the other regarding not only the substantive issues but also the manner in which the case should be conducted. In very general terms, Verizon favors a delay until the FCC has acted in the pending triennial review proceeding and believes a notice-and-comment process would suffice for any proceeding that may be necessary here; the CLECs see no need to await the FCC and call for a full evidentiary process here, including discovery, testimony, and hearings.

While the FCC's triennial review proceeding clearly has a bearing on the issues to be considered here, we cannot predict its outcome or say with any certainty when it will be reached. But there is no reason to assume that the outcome will foreclose this Commission's involvement in these matters or make this proceeding moot. Accordingly, the proceeding will go forward now, though we will, of course, follow developments at the FCC with interest.

As for the procedures to be followed, the CLECs have identified enough mixed issues of fact and law that I cannot agree with Verizon that a notice-and-comment process will suffice. At the same time, many of the issues are the sort that better lend themselves to clarification through discussion among experts than through traditional cross-examination. Accordingly, the process to be followed here will provide for the filing of testimony, followed by an on-the-record technical conference, at which the witnesses will be sworn and questions may be posed not only by counsel but also by opposing experts (and by Staff experts in their advisory capacity).

While I am here setting the overall contours of the process, the details--such as sequence of filing, schedule, discovery matters, and further questions of scope--require further discussion with the parties. I am therefore convening a procedural conference to be held in New York City on December 3. (A formal notice of that conference is being issued concurrently with this ruling.) Among other things, parties should be prepared to engage at the conference in further discussion of the place in this proceeding, if any, of the question of electronic loop provisioning.¹

(SIGNED)

JOEL A. LINSIDER

¹ This does not imply a substantive examination of ELP at the conference but only a discussion of whether and how that examination should be had in this proceeding.